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10/091,039	03/04/2002	James Hammer	1342-61338	6479

7590

02/25/2004

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EXAMINER

NGUYEN, THUKHANH T

ART UNIT PAPER NUMBER

1722

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/091,039

Applicant(s)

HAMMER ET AL.

Examiner

Thu Khanh T. Nguyen

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1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) 40-51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 3/4/03 & 10/09/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-39, drawn to an apparatus for molding masonry blocks, classified in class 249, subclass 140.
  - II. Claims 40-43 and 51, drawn to a method for making a masonry block, classified in class 264, subclass 333.
  - III. Claims 44, drawn to masonry blocks, classified in class 52, subclass 102.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions III and I are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the apparatus as claimed could be used for making a different product such as adobe blocks or the blocks as claimed can be made by another and materially different apparatus such as a press having a ram on one side and a pressing plate on the other side.
3. Inventions II and I are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as

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claimed can be used to practice another and materially different process in which the material is vibrated within the mold cavity during the forming process.

4. Inventions II and III are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process as claimed can be used to make another and materially different product such as adobe blocks or ice blocks; or the product as claimed can be made by another and materially different process such as the blocks are vibratedly formed in the mold cavity.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Mr. Jeffery B. Haendler on January 20, 2004 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-39. Affirmation of this election must be made by applicant in replying to this Office action. Claims 40-51 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the JP 2001-191314 (JP'314) in view of the JP 07-052133 (JP'133).

The JP'314 reference disclose a molding apparatus for forming concrete blocks, comprising mold walls (210) and a plurality of partition walls (230) defining a plurality of mold cavities and openings for removing the blocks from the cavities (Fig. 5a-b), wherein the walls including a plurality of projections (231, 232) for forming a uniform pattern throughout most of the surface (720) of the concrete blocks; and a plurality of mold inserts (240) extended into the mold cavities.

The JP'314 fails to disclose that the projections are tapered or having pyramidal shape and the projections are removable from the mold wall.

The JP'133 discloses a casting mold for precasting concrete material, comprising a mold surface (1) having a plurality of tapered projections (2) to form cone-like projections (§ 0001) all over the main surface of the concrete blocks (§ 0009); the projection can also be a triangle pyramid, a rectangular pyramid, or a hexagon pyramid (§ 0010) and has a slant face with a curved surface of 40-50 degrees to emboss the forming block and to increase the contact surface between the mold and the concrete block to improve the integrity and the shear strength of the

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concrete (§ 0008 & § 0012). The casting mold (3) also includes a separate layer (4) having a plurality of projections (2) on the surface.

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to modify the JP'314 by providing a plurality of pyramidal shape projections on the mold surface and the projections are removable from the mold wall as taught by the JP'133, because the slant surface of the pyramidal shape projections would increase the contacting surface between the mold and the concrete material to improve the integrity of the forming concrete blocks; wherein the removable projections on the mold wall would enable the mold to form concrete blocks having different surface patterns.

In regard to the orientation of the projections on the mold surface, it would have been obvious to one of ordinary skill in the art to rearrange the projections on the mold surface to form a desired embossing pattern on the block surfaces. It has been held that by merely shifting the position of the parts without changing the operation of the mechanism will not render the claims patentable and the placement of the mechanism is an obvious matter of design choice. In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950); In re Kuhle, 526 F.2d 553, 188 USPQ 7 (CCPA 1975).

In regard to the slope of the side surface of the projections, it would have been obvious to one of ordinary skill in the art to change the slope of the side surfaces depending on the desired shape of the projections. The JP'133 has recognized that a slant face redistributes the compression force and increase the shear strength (§ 0012-0014); thus, it would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to

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modify the JP'314 by providing a larger slant surface in the compression direction to reduce stress concentration on the surface of the concrete blocks.

### *Conclusion*

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mullins (4,093,174) and Johnson (6,464,199) disclose a mold form forming concrete blocks with a plurality of projections on the mold surface to emboss the concrete blocks.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thu Khanh T. Nguyen whose telephone number is 571-272-1136. The examiner can normally be reached on Monday- Friday, 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TN

  
ROBERT DAVIS  
PRIMARY EXAMINER  
GROUP 1380-1700

2/18/04